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OFFICE OF PETITIONS

In re Application of
James A. Medsker, et al.
Application No. 10/669,126
Filed: September 23, 2003
Attorney Docket No. JDM-031118

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed by October 5, 2004, to revive the above-identified application.

The petition is **GRANTED**.

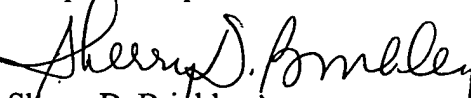
The application became abandoned for failure to timely respond to a Notice to File Missing Parts mailed December 15, 2003. The notice required the statutory basic filing fee, an oath or declaration under 37 CFR 1.63, the requisite surcharge under 37 CFR 1.16(e), and replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121.

On October 5, 2004, the present petition was filed, as well as the basic filing fee, the surcharge, an executed declaration under 37 CFR 1.63, replacement drawings and a 5-month petition for extension of time.

Extensions of time under 37 CFR 1.136 are available only if asked for "prior to or with the response." In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired. Therefore, no extension of time fees are due on a petition for revival. In view thereof, the \$1,005 extension of time fee submitted with the petition is unnecessary and will be refunded to petitioner's deposit account as authorized.

Thereafter the application will be referred to the Office of Initial Patent Examination (OIPE) for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy